

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

EDGAR SANCHEZ,

1:20-cv-12041 (NLH)

Petitioner.

MEMORANDUM OPINION & ORDER

v.

ACTING EXECUTIVE
ASSISTANT ROBINSON

Respondent.

APPEARANCES:

Edgar Sanchez
11708-265
Fairton Federal Correctional Institution
P.O. Box 420
Fairton, NJ 08320

HILLMAN, District Judge

WHEREAS, Petitioner Edgar Sanchez, a federal prisoner incarcerated at FCI Fairton, filed a petition for writ of habeas corpus under 28 U.S.C. § 2241, see ECF No. 1; and

WHEREAS, Petitioner also states he seeks relief under Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971) for Administrative Remedy Coordinator Ms. Robinson's alleged failures to respond to his administrative grievances, ECF No. 1-3 at 8; and

WHEREAS, Petitioner cannot file a civil rights complaint in the same action as his habeas petition. He must file a separate

complaint if he wishes to file a Bivens action. The Court declines to separate the Bivens claim into a separate action at this time because Bivens complaints are subject to a \$350 filing fee and \$50 administrative fee, as well as the limitations of the Prison Litigation Reform Act. Petitioner may request the relevant forms from the Clerk if he wishes to pursue his Bivens complaint; and

WHEREAS, the Court will consider Petitioner's arguments regarding the administrative remedies in the event the United States raises the affirmative defense of failure to exhaust; and

WHEREAS, the Court will dismiss Ms. Robinson from the action and substitute the Warden of FCI Fairton, Petitioner's immediate custodian and the proper respondent in a § 2241 action, Rumsfeld v. Padilla, 542 U.S. 426, 434-35 (2004); and

WHEREAS, in accordance with Rule 4 of the Rules Governing Section 2254 Cases, applicable to § 2241 cases through Rule 1(b) of the Rules Governing Section 2254 Cases, this Court has screened the Petition for dismissal and determined that dismissal without an answer and production of the record is not warranted,

THEREFORE, IT IS on this 23rd day of September, 2020

ORDERED that the Clerk shall substitute "Warden FCI Fairton" for "Acting Executive Assistant Robinson" as the Respondent; and it is further

ORDERED that the Clerk shall serve a copy of the Petition, ECF No. 1 and this Order upon Respondent by regular mail, with all costs of service advanced by the United States; and it is further

ORDERED that the Clerk shall forward a copy of the Petition, supplemental brief, and this Order to the Chief, Civil Division, United States Attorney's Office, at the following email address: USANJ-HabeasCases@usdoj.gov; and it is further

ORDERED that, where the Petition appears to be beyond the jurisdiction of the Court, within forty-five (45) days of the date this Order is filed, Respondent may file a Motion to Dismiss the Petition on jurisdiction grounds only; and it is further

ORDERED that, if a Motion to Dismiss is filed, Petitioner shall have thirty (30) days to file an opposition brief, in which Petitioner may argue any bases for jurisdiction, and to which Petitioner may attach any relevant exhibits; and it is further

ORDERED that, if Petitioner files an opposition, Respondent shall have ten (10) days to file a reply brief; and it is further

ORDERED that, if the Motion to Dismiss is subsequently denied, the Court will then direct Respondent to file a full and complete answer to all claims; and it is further

ORDERED that if Respondent does not file a Motion to Dismiss the Petition, the Respondent shall file a full and complete answer to all claims asserted in the Petition within forty-five (45) days of the entry of this Order; and it is further

ORDERED that Respondent shall file and serve with the answer certified copies of all documents necessary to resolve Petitioner's claims and affirmative defenses; and it is further

ORDERED that within thirty (30) days of receipt of the answer, Petitioner may file a reply to the answer; and it is further

ORDERED that any request to deviate from this Order to Answer shall be made by motion; and it is further

ORDERED that within seven (7) days of Petitioner's release, be it parole or otherwise, Respondent shall electronically file a written notice of the same with the Clerk; and it is finally

ORDERED that the Clerk shall send a copy of this Order to Petitioner by regular mail.

At Camden, New Jersey

s/ Noel L. Hillman
NOEL L. HILLMAN, U.S.D.J.